



September 9, 2024

VIA ECF

Honorable Judge Arun Subramanian
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312
SubramanianNYSDChambers@nysd.uscourts.gov

Re: Joint Letter – Amarte USA Holdings, Inc. v. Bergdorf Goodman LLC, et al., 1:24-cv-00883-AS

Dear Honorable Judge Subramanian:

Pursuant to Your Honor's Opinion and Order (D.I. 93), contemporaneous with this Joint Letter, Plaintiff filed today a Second Amended Complaint that conforms to the Court's Opinion and Order and the parties filed a Proposed Civil Case Management Plan and Scheduling Order. To assure that the parties entry for Paragraph 5.d. in the Proposed Civil Case Management Plan and Scheduling Order is received by the Court, the parties intend this entry for completion of depositions to state: January 31, 2025 (fact depositions) and April 9, 2025 (expert depositions).

The parties file this Joint Letter requesting that this action be stayed pending resolution of Plaintiff's forthcoming appeal in the California Litigation (*Amarte USA Holdings, Inc. v. Kendo Holdings Inc., et al.*, 3:22-cv-08958-CRB (KAW)). On September 4, 2024, the Honorable Judge Breyer in the California Litigation issued Order (D.I.183) denying Plaintiff's motion for summary judgment and granting Defendants' motion for summary judgment that the MJB EYE-CONIC eye shadow does not infringe Plaintiff's EYECONIC® Trademark for Class 3: eye cosmetics; eye creams. Plaintiff intends on appealing Judge Breyer's Order and all parties in this action respectfully request the Court to stay this action pending resolution of this appeal.

If the Court does not agree to a stay, Defendants intend to file a motion to dismiss this action on the grounds of collateral estoppel with respect to Plaintiff's claims of infringement of the MJB EYE-CONIC eye shadow. The parties agree that



discovery should be stayed pending briefing and resolution of such motion to dismiss and proceed only with respect to Plaintiff's claims of infringement with respect to the MZ Skin EYECONIC eye patches products.

Should the Court have any questions, the parties remain available at the Court's convenience.

Respectfully submitted,

LIPPES MATHIAS LLP

By: /s/Tony V. Pezzano

Tony V. Pezzano

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The case is STAYED pending resolution of the appeal. The parties shall update the Court on the status of the appeal every 90 days, starting October 5, 2024. The Clerk of Court is directed to terminate the motion at ECF No. 95.

SO ORDERED.

Arun Subramanian, U.S.D.J.
Date: September 11, 2024